IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6134 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAFIQBHAI AKBARBHAI SETA

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR KT DAVE ASSTT GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 02/02/2000

ORAL JUDGEMENT

#. Heard Mr.H.R.Prajapati, learned advocate for the petitioner and Mr.K.T.Dave, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 31-5-99 passed by

respondent No.2 - The District Magistrate, Mehsana against the petitioner in exercise of powers conferred under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-B interalia indicate that in all 8 prohibition cases are registered against the petitioner at Nashabandhi Station, Mehsana and / or Mehsana City Police Station in between 15-9-97 to 3-4-99. That in each case, Indian made Foreign liquor has been seized from the possession of the petitioner / detenu. That except case registered vide C.R. No : 136 / 99, all the other cases are pending for trial in the Court. Over and above, that three witnesses have given their statement on 11-1-99, 12-5-99 and 13-5-99 respectively regarding the anti social activities of the petitioner and have referred to incidents alleged to have occurred one and half months prior to statement, 13 days prior to the statement and one month prior to statement respectively. That on the basis of the said material, the respondent No. 2 as the detaining authority has come to the conclusion that the petitioner / detenu is a bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the impugned order is bad in law on account of the non application of mind inasmuch as while formulating the grounds of detention, the detaining authority was not alive of the fact of status of the petitioner as to whether the petitioner was in police custody, judicial custody or released on bail. That the detaining authority has failed to consider the aspect of less drastic remedy like claiming of cancellation of bail as available under Section 437(5) of the CrPC and it appears that in criminal case registered vide C.R. No : 11/99, the petitioner was released on bail on 20-2-1999. That said non application of mind has vitiated the subjective satisfaction, rendering the impugned order invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS.

STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, it appears from the grounds of detention that the detaining authority has failed to consider the status of the petitioner in respect to prohibition cases registered against the petitioner while passing the impugned order. That documents supplied to the detenu contained an order of releasing the petitioner on bail on 20-2-99 in the prohibition case No : 11/99 registered at Mehsana City Police Station. That on that count, before passing the impugned order, the sponsoring authority had sufficient time to claim a cancellation of bail as information is received in January 1999 through the anonymous witnesses. Under these circumstances, on account of said non application of mind on the part of the detaining authority, it is difficult to uphold the order.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 31-5-99 passed by respondent No. 2 - The District Magistrate, Mehsana against the petitioner is hereby quashed and set aside. The petitioner - SHAILESHBHAI THAKORBHAI THAKKAR is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 2-2-2000 [A.K.Trivedi, J.]

#kailash#